



**OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA
BOARD OF CEMETERIANS**

IN THE MATTER OF

Floyd Memory Gardens, LLC

Respondent.

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Case Number: ENCE-0382

NOTICE OF OPPORTUNITY FOR HEARING

**TO: Floyd Memory Gardens LLC
895 Cartersville Highway SE
Rome, GA 03161**

PLEASE TAKE NOTICE that the Secretary of State of the State of Georgia ("Secretary") by and through the State Board of Cemeterians ("Board") intends to issue the Proposed Order ("Order") attached hereto to **Floyd Memory Gardens LLC** ("Respondent," "Floyd," or "Cemetery") pursuant to the Georgia Cemetery and Funeral Services Act of 2000, O.C.G.A. § 10-14-1, *et seq.* ("Act"). The Order is being proposed based on information known to the Secretary at the time this Notice of Opportunity for Hearing was issued and may be amended or modified at any time prior to its entry.

Pursuant to O.C.G.A. § 10-14-23, Respondent is hereby notified that within ten (10) days after receipt of a request for a hearing in a record from Respondent, this matter will be scheduled for a

hearing unless another date and time is otherwise agreed to by the parties. If Respondent does not request a hearing and none is ordered by the Secretary within ten (10) days after the date of service of this Order, this Order will become final as to Respondent by operation of law. If a hearing is requested or ordered, the Secretary, after notice of opportunity for hearing to Respondent, may modify or vacate this Order or extend it until final determination.

1. GROUNDS. The grounds for the issuance of this Order are that Respondent engaged in conduct in violation of O.C.G.A. § 10-14-17.

2. REQUEST FOR HEARING. Pursuant to O.C.G.A. § 10-14-23, this Order may be entered by the Secretary unless Respondent requests a hearing within ten (10) days of receipt of this notice. A request for hearing may be delivered to the attention of Noula Zaharis, Director, Office of the Secretary of State, Securities and Charities Division, 2 Martin Luther King Jr. Dr., SE, Suite 317 West Tower, Atlanta, GA 30334 or by electronic mail at nzaharis@sos.ga.gov.

3. PROCEDURE FOR REQUESTING A HEARING. If the Respondent requests a hearing, the request for hearing must be in writing and contain the following information as required by Rule 590-3-1-.05 of the Rules of Office of Secretary of State (hereinafter, the “Rule” or “Rules”):

- a title which indicates the nature of the proceedings;
- the complete name and address of the person or persons on whose behalf the request is filed;
- the name and address of all other persons known to have a legal interest in the proceedings;
- if the person or persons on whose behalf the request is filed are represented by counsel, the name and address of counsel;
- a clear and concise statement of the facts upon which the contested case arises;
- a prayer setting forth the relief sought; and
- a statement of the grounds upon which the person contends he is entitled to the relief sought.

4. SCHEDULING OF HEARING. If requested, a hearing will be scheduled before a Hearing Officer appointed by the Secretary, the ultimate decision maker in this matter, in no less than fifteen (15) days but not earlier than five (5) days after the request is made, unless otherwise agreed to by the parties.

5. ISSUES TO BE ADDRESSED. If a hearing is requested, the issues to be addressed are set forth in the attached Order that is incorporated herein by reference and made a part of this Notice of Opportunity for Hearing.

6. CONTESTED CASES. This is a contested case proceeding and pursuant to the Rules it shall be conducted as expeditiously as possible, with regard to the rights of the parties, and in a manner to enable the parties to obtain relevant information needed for preparation of the case to the extent that such disclosure is authorized or required by law.

7. LEGAL AUTHORITY AND JURISDICTION. This Notice of Opportunity for Hearing is issued pursuant to O.C.G.A. § 43-17-23, Rule 590-3-1-.05, and O.C.G.A. § 50-13-1 *et seq.* (The Georgia Administrative Procedure Act).

8. INFORMAL CONFERENCE. Respondent may request an informal conference with the Division Director pursuant to Rule 590-3-1-.05. The receipt of a written request for an informal conference will toll, until the date that such conference is scheduled, the running of the time for requesting and setting a hearing. A request for hearing that does not contain the required information as outlined above will be treated as a request for an informal conference. Further information regarding an informal conference may be obtained by contacting Noula Zaharis at (470) 312-2787 or nzaharis@sos.ga.gov.

9. RIGHTS OF PARTIES. The parties to this matter shall have all of the rights provided for

in the Act, the Rules and the Georgia Administrative Procedure Act, including but not limited to the following:

- To subpoena witnesses and documentary evidence;
- To secure testimony by deposition or interrogatories if authorized or directed by the Hearing Officer;
- To be represented by legal counsel; and
- To respond and present evidence on all issues involved.

SO ORDERED this 20th day of May 2021.

BOARD OF CEMETERIANS

By: 

Richard Parker
Chairman

BRAD RAFFENSPERGER
SECRETARY OF STATE

By: 

Noulia Zaharis
Director
Securities and Charities Division



**OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA
BOARD OF CEMETERIANS**

IN THE MATTER OF

Floyd Memory Gardens LLC

Respondent.

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Case Number: ENCE-0382

ORDER TO CEASE AND DESIST AND IMPOSITION OF CIVIL PENALTY

This matter comes before the Secretary of State of the State of Georgia ("Secretary") by and through the Board of Cemeterians ("Board") pursuant to the authority granted in O.C.G.A. § 10-14-14, *et seq.* of the Georgia Cemetery and Funeral Services Act of 2000, as amended ("Act"). Whereas, the Secretary undertook an investigation into the acts and practices of Floyd Memory Gardens LLC. ("Floyd," "Respondent," or "Cemetery").

Based on the investigation, the Secretary has found grounds to conclude that Respondent may have engaged in acts or practices constituting violations of the Act. The Secretary has determined it is in the public interest to issue this Order.

Based upon information obtained during the investigation, the Secretary finds as follows:

FINDINGS OF FACT

1. Floyd is located at 80 Church Street, Rome, Georgia 30161.
2. Floyd is registered with the Securities and Charities Division ("Division") of the Office of the Secretary as a Perpetual Care Cemetery pursuant to O.C.G.A. § 10-14-3(28). Floyd has been registered with the Division since August 6, 2011.

3. Floyd lists its Perpetual Care Trust address as 3600 Horizon Blvd, Suite, 100, Feasterville Trevose, Pennsylvania 19053. Floyd lists Diana Burkholtz as its Owner/Manager, as well as its Director of Trust.

4. In March 2021, the Division received a tip from the Rome, Georgia office of the 11Alive news network, alleging a series of care and maintenance failures.

5. Among these alleged care and maintenance violations, 11Alive provided a link to a Facebook group devoted to complaints regarding the care and maintenance of Floyd, along with two (2) other Rome, Georgia cemeteries. According to the Facebook group's "about" section, it was created on May 16, 2017. The Facebook group can be found at <https://www.facebook.com/groups/621354228063688>. Complaints against Floyd on the Facebook page include, but are not limited to:

- a. Unkempt and uncut grass, including unmanaged weeds;
- b. Barren and bare areas of the grounds with no grass growing at all;
- c. Areas in the grounds bearing damage from vehicles and heavy machinery;
- d. Damaged, broken, and toppled headstone markers and monuments;
- e. Trash littering the grounds; and
- f. Sunken graves and headstone markers.

6. According to statements made by visitors of Floyd on the Facebook group, Floyd has failed to properly address these care and maintenance complaints, despite being alerted to their existence.

7. On March 23, 2021, the Securities and Charities Division ("Division") sent an inspector from the Secretary's office to inspect the site and report on the condition of Floyd's care and maintenance. The inspector took one hundred ninety-seven photos ("Photo(s)") of the Cemetery and submitted a questionnaire to Floyd to address the inspector's findings. The inspector's findings are described in detail below.

a. Entryway

8. The inspector identified a sign at the entryway of the Cemetery, which was legible. The Inspector also observed that the sign does not identify the location of the main office for the Cemetery, even though the main office is not on the Cemetery's grounds.

9. The Photos confirm the inspector's report. While the signage at the entryway is legible and displays the name of the Cemetery, it contains no information regarding the location of the Cemetery's main office.

b. Grounds

10. The inspector found the grounds in poor condition. The inspector reported many bare patches of grass, which contained little to no sign of treatment, such as the presence of new grass seed, sod, or hay. The inspector also reported that the landscaping crew was onsite when he arrived and he observed them finishing. The inspector reported that cuttings from the landscaping obscured markers and that at no time did he observe any of the landscaping crew bag and remove cuttings or remove any cuttings obscuring markers.

11. The inspector also reported barren and bald areas with no grass throughout the Cemetery's grounds. The inspector did not see any grass seed, sod, or hay laid down on any of these barren areas, nor did he observe the landscaping crew lay any grass seed or put down any sod.

12. The inspector also reported track mark damage caused by vehicles and heavy equipment driving across the grounds. According to the inspector's observation of the tracks, vehicles and equipment have been going across the grass in order to take the easiest and quickest routes across the grounds rather than take roads the long way.

13. The inspector reported trash littering the grounds, particularly along the areas of the grounds lining the woods.

14. The Photos provided by the inspector support his findings. The Inspector provided thirty (32) Photos that show large areas of barren and bare grass, which contain no suggestion of restorative efforts, such as grass seed, hay, or sod. In fact, several Photos show areas surrounding graves that are almost completely barren. Other Photos of the grounds show areas with dried out and cracked soil that appear unfit for the purpose of growing new grass.

15. Multiple Photos show large areas of damaged grounds bearing track marks, indicating that Floyd allowed heavy machinery to cut across the grass rather than travel along the Cemetery's road system. Many of these track marks show no indication of grass re-growing, and Photos do not show evidence of reparative efforts aimed at restoring damage caused by tracks. Several Photos shows these track marks running through graves and markers.

c. Graves

16. As with the condition of the grounds, the inspector observed that gravesites were in poor condition. The inspector noted that several graves were sinking or settling on the grounds. The

inspector also noted barren soil covering graves. Further, the inspector did not observe any hay or grass seed on any of these graves.

17. The inspector also reported several graves that did not bear any identification, such as markers or headstones. Of these graves, the inspector observed only one grave bearing temporary identification, which was handwritten on a board.

18. Many of the Photos show graves similarly covered in rocky, arid soil with no signs of grass growing or attempts to grow grass. Several Photo show graves that are covered with arid and cracked soil with no grass growing and no grass seed or hay laid on the graves, indicating that the graves have been neglected for some time with no intent to cultivate new grass. In fact, Photos show no less than twelve (12) graves from 2020, two (2) graves from 2019, and one (1) grave from 2014 covered with barren and grassless topsoil with no evidence of any restorative efforts, such as laying grass seed or sod, indicating extensive neglect for the care and maintenance of graves.

19. Further, Photos demonstrate a substantial number of sunken graves. Most Photos show graves that have sunken two to three inches that nonetheless bear no indication of corrective measures taken by Floyd. Several Photos, however, depict excessive degrees of grave sinking that indicate a blatant disregard for the care and maintenance of graves. For example, one such Photo shows a grave that has sunken approximately one (1) foot deep.

20. Most egregiously, the Photos show two (2) graves that bear neither permanent identifiers, such as markers or headstones, nor temporary identifiers, such as handwritten temporary markers. The first grave is covered in barren, rocky, and grassless topsoil with no grass seed, hay, or sod. The other unidentified grave appears to have collapsed onto itself, sinking as much as one (1) foot.

d. Headstones, Markers, and Monuments

21. The inspector observed numerous issues with the conditions of headstones, markers, and monuments. The inspector observed that many headstones and markers were unlevel, indicating that they were in the process of sinking.

22. The Inspector also observed that many markers were obscured by overgrown with grass and weeds, and that this was a “rampant issue” at the Cemetery.

23. Further, the inspector reported many broken markers and headstones that appeared to have been damaged by Floyd’s maintenance crew. The Inspector also noted that one burial resulted in a damaged headstone to an adjacent marker.

24. Photos provided to the Division support the inspector's findings. Numerous Photos display unlevel markers in the process of sinking. For example, two (2) Photos show sinking around two separate markers that is so severe that the entire bottom of each marker is exposed.

25. Other Photos demonstrate markers and headstones that are damaged or in a state of disrepair. Many Photos show markers that broken down the middle with the name plates on top bent and curled as if crushed by a heavy object. Indeed, several photos show track marks leading to markers or over markers, indicating that Floyd allowed vehicles or heavy equipment to drive directly over markers.

26. Other Photos show markers that appear to be soiled or obscured due to the negligence of Floyd's maintenance staff. Many photos contain markers that are caked with dirt and mud so that the names on them are not fully legible.

e. Roadways

27. The inspector observed the roads in poor condition. The inspector reported potholes in the roads, as well as evidence of past resurfacing that either did not hold or has since worn over time due to neglect. Further, the inspector noted evidence of possible water drainage issues resulting in prior standing water evidence by orange staining on the roads.

28. The Photos support the inspector's findings. Throughout the Cemetery, roads show signs of time-related damage, such as stress fractures and erosion. The Photos also show several potholes throughout the road system. One of these potholes appears to have at one point been filled with gravel, but has since emptied due to wind. None of these potholes appear to have been addressed by other temporary measures, such as quick-drying cement.

f. Questionnaire

29. As a part of his inspection, the inspector submitted a questionnaire to Floyd prepared by Division. The questionnaire requested information regarding what systems, if any, Floyd has in place for the purpose of processing complaints by the Cemetery's visitors as well as what systems, if any, the Cemetery uses for logging and addressing care and maintenance work orders. To this date, Floyd has failed to provide any answers to the Division pursuant to the submitted questionnaire.

CONCLUSIONS OF LAW

30. Paragraphs 1 through 29 are incorporated by reference as though fully set forth herein.

31. The Secretary has jurisdiction over this matter pursuant to the Act. *See* O.G.C.A. §§ 10-14-14 and 10-14-19.

32. Pursuant to O.C.G.A. § 10-14-19(a)(1) of the Act, if the Secretary determines:

that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter or by any rule, regulation, or order of the Secretary of State promulgated or issued pursuant to any Code section of this chapter or which is declared to be unlawful under this chapter, the Secretary of State may...[i]ssue an order, if he or she deems it to be appropriate in the public interest or for the protection of consumers, prohibiting such person from continuing such act, practice, or transaction, subject to the right of such person to a hearing as provided in Code Section 10-14-23.

33. Pursuant to O.C.G.A. § 10-14-19(f) the Secretary is authorized to impose a “civil penalty not to exceed \$10,000.00 for a single violation and not exceeding \$100,000.00 for multiple violations in a single proceeding or a series of related proceedings.”

34. Respondent Floyd is registered with the Division as a perpetual care cemetery pursuant to O.C.G.A. § 10-14-4. Thus, Floyd is subject to discipline under the Act.

35. Pursuant to O.C.G.A. § 10-14-17(i), “[i]t shall be unlawful for any owner or operator of a perpetual care cemetery to fail to provide care and maintenance for the cemetery.”

36. Pursuant to O.C.G.A. § 10-14-3(6):

“Care and maintenance” means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well cared for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community. As specified in the rules of the Secretary of State, care and maintenance may include, but is not limited to, any or all of the following activities: mowing the grass at reasonable intervals; raking and clearing the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements. Care and maintenance may include, but is not limited to, reasonable overhead expenses necessary for such purposes, including maintenance of machinery, tools, and equipment used for such purposes. Care and maintenance may also include repair or restoration of improvements necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. Care and maintenance does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public.

37. Pursuant to the Georgia Rules and Regulations Chapter 590-3-1-.01(2), “[care and maintenance] shall be further defined as appropriately marking each entrance to the cemetery property from any public road, with at least one such entrance having a sign indicating the name of the cemetery, and the location of the office for such cemetery if not located on that property.”

38. Respondent Floyd has failure to provide signage that identifies the location of its office, which is not located on the Cemetery property.

39. Respondent Floyd has engaged in a persisting and systemic failure to provide for care and maintenance for the Cemetery. Floyd has not provided landscaping for the Cemetery grounds, including failing to properly treat the grounds for weeds and failing to properly mend barren areas in the grass. Since at least 2017, Floyd has failed to take the proper measures to correct these care and maintenance issues, despite being repeatedly alerted to their existence.

40. Floyd has further failed to provide for care and maintenance for the Cemetery by failing to repair and mend the ground from damage caused by allowing vehicles and other heavy machinery to drive across its grounds. Since at least 2017, Floyd has failed to take the proper measures to correct these care and maintenance issues, despite being repeatedly alerted to their existence.

41. Floyd has further failed to provide for care and maintenance for the Cemetery by failing to maintain the cemetery’s road system and for its failure to repair potholes, fissures, and other deterioration and erosion in the road system. Since at least 2017, Floyd has failed to take the proper measures to correct these care and maintenance issues, despite being repeatedly alerted to their existence.

42. Floyd has further failed to provide for care and maintenance for the Cemetery by failing to keep its graves in a dignified condition by allowing graves to sink and become bare, and has failed to provide remedial maintenance to return graves to a dignified condition. Since at least 2017, Floyd has failed to take the proper measures to correct these care and maintenance issues, despite being repeatedly alerted to their existence.

43. Floyd has further failed to provide for care and maintenance for the Cemetery by failing to repair damage caused to markers and headstones by Floyd’s care and maintenance staff. Since at least 2017, Floyd has failed to take the proper measures to correct these care and maintenance issues, despite being repeatedly alerted to their existence.

44. These activities described in paragraphs 39 through 43 are violations of O.C.G.A. § 10-14-17(i). These violations are actionable events pursuant to O.C.G.A. § 10-14-19; therefore, Respondent is subject to discipline.

ORDER

WHEREFORE, by the authority vested in me as the Secretary of State for the State of Georgia, **IT IS HEREBY ORDERED**:

1. That **FLOYD MEMORY GARDENS LLC** immediately **CEASE AND DESIST** all violations of the Georgia Cemetery and Funeral Services Act of 2000, as amended.

2. **FLOYD MEMORY GARDENS LLC** pay a **civil penalty** in the amount of one hundred thousand dollars (\$100,000.00).

3. **FLOYD MEMORY GARDENS LLC** remit payment of the Secretary's **cost of investigation** in the amount of one thousand five hundred dollars (\$1,500.00) to the Secretary due within thirty (30) days of the entry of a Final Order by the Secretary..

The entry of the Order is deemed to be in the public interest and shall not be deemed to constitute findings or conclusions relating to other persons unrelated to Respondent and shall not be deemed to be a waiver or estoppel on the part of the Secretary from proceeding in individual actions against any person who may have violated the Act or any transactions not specifically referred to herein or not known to the Secretary at the time this Order was issued.

SO ORDERED this ____ day of ____ 2021.

BOARD OF CEMETERIANS

BRAD RAFFENSPERGER
SECRETARY OF STATE

By: _____
Richard Parker
Chairman

By: _____
Noula Zaharis
Director
Securities and Charities Division